THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13362 OF 2007

DATED: 26-06-2007

Between :

T. Nageshwar Rao and 8 others. … Petitioners

And

The Collector (CS), Nalgonda District,
And two others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13362 OF 2007

ORDER:

The petitioners herein were granted licenses in Form-B under The Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short, 'the Order') for sale of kerosene in retail in Huzurnagar Town. The said licenses were cancelled by the Mandal Revenue Officer, Huzurnagar vide proceedings dated 5-12-2005 on the ground that the appointment of the petitioners was irregular since they were appointed after imposition of ban dated 25-4-1994. Aggrieved by the said order, the petitioners preferred an Appeal before the 2nd respondent – Revenue Divisional Officer, Miryalaguda. The said appeal was dismissed by order dated 30-01-2006 as barred by limitation since it was filed with a delay of 17 days. It was also observed by the 2nd respondent that the appeal was wrongly filed under Clause-17 of the Order, whereas the appeal is provided under Clause-31. Challenging the said order, the petitioners made a Revision Petition before the first respondent-Collector, Civil Supplies with a prayer to set aside the order of the Revenue Divisional Officer. The first respondent by order dated 1-6-2007 rejected the same as not maintainable since the petitioners have already availed the remedy of appeal before the Revenue Divisional Officer and there is no provision for Revision under the Control Order. The said order is under challenge in this writ petition.

I have heard the learned Counsel for the petitioners as well as the learned Government Pleader for Civil Supplies appearing for the

respondents.

The learned Counsel for the petitioners, while referring to Clause-31(1)(c) of the Order, vehemently contended that against the order passed by the Revenue Divisional Officer, an appeal lies to the Collector and therefore, the 1st respondent ought to have treated the petition of the petitioners as an Appeal and decided the same on merits.

On a careful reading of Clause-31 of the Order, I do not find any substance in the contention of the learned Counsel for the petitioners.

Clause-31 of the Order which provides for a remedy of appeal runs as under :

> 31. Appeal: (1)Any person aggrieved by any order to grant, reissue or renew a licence, or certificate or supply card or by any order canceling or suspending a licence or certificate or forfeiting the security deposited by the licensee or holder of certificate under the provisions of this order, may prefer an appeal within thirty days, from the date of such order by him.
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> (a) to the Commissioner if such order is that of the Chief Rationing Officer, Hyderabad or the Collector.
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> (b) To the Chief Rationing Officer, Hyderabad, if such order is that of the Assistant Supply Officer, Hyderabad or Secunderabad;
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> (c) To the Collector of the district concerned, if such order is that of a Revenue Divisional Officer or District Supply Officer; and
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> (d) To the Revenue Divisional Officer concerned, if such order is that of a Tahsildar:
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> (e) To the Collector (Civil Supplies) Rangareddy District if such order is that of the Assistant Supply Officer, Rangareddy District.
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> Provided that the appellate authority may admit an appeal preferred after the expiry of the said period of thirty days, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the said period.
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> (2) The appellate authority shall, after giving an opportunity to the appellant to be heard, pass such order as he may think fit, confirming modifying or annulling the orders appealed against.
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> (3) Pending disposal of the appeal, the appellate authority may direct that the orders against which an appeal is preferred shall not take effect until the appeal is disposed of.

On a plain reading of the above provision, it is clear that the remedy of appeal is available to any person aggrieved against the original order passed by the Assistant Supply Officer/Tahsildar/Revenue Divisional Officer or District Supply Officer/Assistant Supply Officer/ Chief Rationing Officer. Either clause-31 or any other provision under the order does not provide for further appeal against the order passed on such appeal. It is also relevant to note that the Control order does not provide for any remedy of Revision. Hence, the impugned order passed by the 1st respondent in rejecting the Revision Petition cannot be held to be erroneous on any ground whatsoever.

However, a perusal of the order passed by the 2nd respondent dated 30-1-2006 shows that the appeal was dismissed only on technical grounds that the Appeal was preferred under a wrong provision and that the appellants failed to seek condonation of delay in preferring the Appeal.

The law is well-settled that mere quoting of wrong provision is not a bar to exercise the powers if the authority is conferred with such power under any other provision. Hence, the 2nd respondent ought not to have dismissed the Appeal on that ground since admittedly an appeal lies to the 2nd respondent under Clause 31 (1) (d) against the order of the 3rd respondent.

Similarly, the proviso to Clause 31(1) of the Order empowers the appellate authority to admit an appeal preferred even after the expiry of the period of limitation, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within the said period.

In the circumstances, even assuming that the petitioners had preferred the Appeal against the order of the 3rd respondent beyond the limitation, the second respondent ought to have considered

whether any sufficient cause is made out for not preferring the appeal within the period of limitation.

Apparently, the 2nd respondent had not gone into the said aspect while dismissing the Appeal by order dated 30-01-2006. Hence, in my considered opinion, to meet the ends of justice, the matter requires reconsideration by the 2nd respondent who is the appellate authority under clause–31 (1) (d) of the Control Order.

For the aforesaid reasons, though the impugned order of the 1st respondent dated 1-6-2007 cannot be held to be erroneous, I deem it appropriate to dispose of the Writ Petition permitting the petitioners to make an appropriate application before the 2nd respondent explaining the delay in preferring the appeal against the order of the 3rd respondent. If any such application is made within a period of two weeks from the date of receipt of this order, and the appeal is resubmitted, the 2nd respondent shall consider the same following due process of law and pass appropriate orders in exercise of the appellate powers conferred under Clause-31(1) (d) of the Control Order.

Accordingly, the order of the 2nd respondent dated 30-01-2006 is set aside and the Writ Petition is disposed of with the above directions. No costs.

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G. ROHINI, J.

Dt. 26–06-2007

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